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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

MAURICE J. TOBIN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, AND THE UNITED STATES OF AMERICA, *Petitioners*,

v. No. 98

LITTLE ROCK PACKING COMPANY, CHRIS KIRSCHNER, AND OTTO FRIEDRICH, JR., *Respondents*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH DISTRICT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court consists of findings of fact and conclusions of law (R. 74, 84).[1] It is reported at 104 F. Supp. 527. The opinion of the Court of Appeals (S.R. 40-46) is reported at 202 F. (2) 234.

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[1]The record in the Court of Appeals comprises two volumes entitled "Record" and "Supplemental Record of Appellees." In this brief references thereto will be "R." and "S.R.", respectively.

JURISDICTION

The jurisdiction of this court has been invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Should this court review the findings of fact sustained by both lower courts to the effect that the hourly rate of pay stipulated in certain employment agreements was a bona fide rate agreed upon by employer and employee and used for the purpose of complying with the Fair Labor Standards Act and not to evade the act?

2. Should this court review a trial court's exercise of discretion in dissolving an injunction, which in general terms enjoins violations of the Fair Labor Standards Act, under circumstances indicating conscientious efforts by the employer to comply over a period of ten years, together with a manifest intent of the employer to continue compliance, particularly when the evidence discloses intemperate use of the injunction by the party at whose request it originally was granted?

STATEMENT OF THE CASE

The respondent, Little Rock Packing Company, is a small independent meat-packing company of Little Rock, Arkansas. The respondents, Chris Finkbeiner and Otto Finkbeiner, Jr., are the managing officers of the company. The founder of the company, Otto Finkbeiner, Sr., was an immigrant to this country. From an inauspicious start as a sausage peddler, by virtue of long hours of toil and constant savings, Finkbeiner, Sr., developed a meat-packing plant of substantial proportions for the community in which it was located. Like many others, in the early days of the Fair Labor Standards Act, Finkbeiner, Sr.. became involved with its perplexities, and, in 1942, the Wage and Hour Division secured an injunction enjoining the com-

pany and its officers and agents, in general terms, from violating the act.

Otto Finkbeiner, Sr., died in 1947 (R. 63), leaving the management of the business to his two sons, Chris and Otto, Jr., respondents herein.

After the injunction was granted in 1942, the Wage and Hour Division made no further examination of the company until its investigation of June, 1951, which gives rise to the present litigation (S.R. 10). The latter investigation was made as the result of an anonymous telephone complaint to the Wage and Hour Division, and not for the purpose of determining whether the company was complying with the court's injunction (S.R. 11). The investigation covered the entire period subsequent to the date of the injunction. No violations were found, except the alleged violations with respect to the office employees (S.R. 12, 23). The pay roll of these employees as compared to the entire plant pay roll was trivial (Finding of fact No. 10, R. 82).

The Wage and Hour Division complains of an employment arrangement whereby office employees were enabled to earn a fixed minimum amount each week. The Division does not contend that these employees worked during any period of time for which they were not paid; on the contrary, it contends that they were paid for periods of time when actually they were not at work (S.R. 17). The reason that the investigator thought there was a violation was the fact that the office employees were employed on a regularly scheduled work week of more than forty hours, and it was inconceivable to him that one person would work the same number of hours every week (S.R. 12). His Department has never approved a guaranteed weekly wage for any employee whose hours of work exceeded forty and who did not work precisely the same number of hours each week. (S.R. 18). To comply with regulations, the wage

of such an employee would have to vary each week in accordance with the hours worked (S.R. 18). It is assumed that the witness was quoting the views of his Department rather than personal opinions. If this be a correct assumption, it is clear that the Wage and Hour Division will brand as illegal any plan whereby employees are enabled to earn an amount certain each week.

During the entire period relevant hereto, the respondent company maintained detailed employment records. Each employee signed and entered his own work hours each day. Examples of these time records appear on Pages 33 and 35 of the Supplemental Record. On the basis of these time records, weekly wages were computed and extended on employment record forms of the type appearing on Page 31 of the Supplemental Record. During the years in question, the company had in its employ in December of each year a minimum of fifty-five employees and a maximum of one hundred and twenty employees (Finding of fact No. 10, R. 82). During the same years there were a minimum of one and a maximum of six office employees about whom complaint is made in this case. In December, 1951, the affected office employees had a total weekly pay roll of $310, while the entire plant pay roll was $5,800.

During the years 1942, 1943, and 1944, the office employees were on a regular fifty-hour schedule and were paid hourly wages based on fifty hours of work. They worked regularly eight and one-half hours per day, Monday through Friday, and seven and one half hours on Saturday (R. 46, 49).

In the meat-packing business it is customary to make collections each week for sales made the previous week (R. 47). It is therefore necessary for the office to prepare bills or statements prior to closing on Saturday for all sales made during the

current week so as to enable the salesmen to make collections beginning on the following Monday (R. 47).

Some time after 1944, in lieu of requiring all office employees to remain on duty until the scheduled closing hour on Saturday, the company instituted the practice of permitting the office employees to leave on Saturday when their work was completed (R. 49). The discontinuance of Saturday sales and deliveries (R. 64) also reduced the volume of office work to be performed on Saturday. The office manager told these employees that if they would speed up and complete their work ahead of schedule they, nevertheless, would receive a full day's pay (R. 47). The office employees continued, however, to record on their time records a full seven and one-half hours' work on Saturday, even though at times they did not work the full number of hours, and the company, pursuant to its agreement, paid them for the full day's work (Finding of fact No. 8, R. 80, 81). Each of the employees was familiar with the terms of his employment and was fully satisfied (Finding of fact No. 7, R. 79).

The president of the company explained that his plant was located at the east edge of the city, far removed from the business district, and that he did not feel that it was right or proper to ask his employees to come to work on Saturday if they could be paid for only two or three hours of work, and that, therefore, he continued to maintain the policy of paying for the full fifty hours of work whether or not that amount of work actually was required (R. 64).

Each of the office employees was hired on an hourly wage not less than the minimum required by the act; each knew and understood the terms of his employment; each knew that he was hired on an hourly rate and not on a weekly or monthly salary basis; and each knew that he was guaranteed a minimum number of hours per week (Finding of fact No. 8, R. 80).

Each of these employees had, in fact, worked on his own pay roll records from time to time (R. 56).

In the trial court, the petitioner did not endeavor to prove that the hourly wages of the office employees, when disassociated from the weekly guarantee, were not in line with the scale of wages being paid other employees in the community doing similar work. The petitioner asked the court to draw an inference based upon isolated record entries that the specified hourly wage was fictitious and that, in fact, the office employees were paid on a weekly basis. Neither the trial court nor the Court of Appeals thought the inference was justified, since it was contrary to all of the evidence introduced by the petitioner himself.

The petition for certiorari requests this court to review the factual issue as to the bona fides of the hourly rate stipulated in the employment contract. It further asks this court to review the propriety of the dissolution of the injunction rendered in 1942.

The trial court found that for a period approximating ten years prior to the date of the trial the respondents had in good faith endeavored to fully comply with the Fair Labor Standards Act and with the injunction previously rendered. It further found that the company had in all substantial respects actually complied with the act and the injunction; that the only deviation was its failure to record the actual hours or minutes of work each week performed by a trivial number of office employees, and that this violation was purely a technical one, it being stipulated by the parties that not one of the employees had actually worked longer than the number of hours credited to him each week. The court in its findings commented upon the fact that the present proceedings were, in the court's opinion, largely unjustified (Finding of fact No. 12, R. 83). The lower court felt that equity and justice required the disso-

lution of the injunction. The company had demonstrated over a long period of years its entire good faith. No doubt, the court was shocked by the fact that the Wage and Hour Division was determined to seek both civil and criminal penalties for a violation which to the court, at best, appeared trivial.

During the course of the investigation, the investigator recommended to the company various changes in record keeping methods, including the installation of a time clock and the removal of office employees from the guaranteed wage plan. The company immediately complied with every recommendation he made (S.R. 15, 26). The investigator received complete cooperation from the management (S.R. 25). He did not discuss with the company restitution of the presently alleged underpayments "because we don't discuss restitution if there is a potential litigation" (S.R. 22).

Following the investigation, the president of the company conferred with Mr. Hicks, head of the District Office of the Wage and Hour Division (R. 70). Mr. Hicks told him that he would have to take the matter up with the Regional Office at Dallas (R. 70). Mr. Finkbeiner make a trip to Dallas, where he was informed that the case was "too big" for the Dallas Office and had been forwarded to Washington. No effort whatever was made by the Wage and Hour Division to adjust this matter short of litigation. Although the respondents had manifested every intention to fully comply with the act and to cooperate with the Wage and Hour Division, it, nevertheless, insisted on filing suit for civil and criminal penalties, with the resultant adverse publicity to respondents.

In the light of these facts the lower court felt that justice and equity required dissolution of the injunction. The Court of Appeals affirmed.

ARGUMENT

[1a.] The petitioners contend that the stipulated hourly rate of pay under respondents' wage plan was not the true regular rate of pay. The determination of this issue involves only the determination of questions of fact. Both lower courts resolved the issues of fact adversely to petitioners. The opinion of the Court of Appeals makes it clear that petitioners' argument is based solely upon an inference drawn from the company's pay roll records, which inference is directly opposed to the testimony of every witness (S.R. 43). The inference also is rebutted by petitioners' stipulation that Irene B. Ellis, one of the respondents' office employees, was properly paid (R. 73). She, too, worked under the weekly guarantee. The hourly rate of Irene B. Ellis was necessarily a bona fide hourly rate, since it is stipulated that she was properly paid. No explanation is offered by petitioners to reconcile the inconsistency of their position with reference to different employees in the same employee group working under identical wage plans.

Petitioners' contention is that a specified hourly rate under a guaranteed wage plan is always fictitious if the affected employee is never permitted to work more than the guaranteed hours of work. To support this contention reliance is placed on the following decisions: *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419; *Walling* v. *Harnischfeger Corp.*, 325 U.S. 427; *Walling* v. *Helmerich & Payne*, 323 U.S. 37; *149 Madison Avenue Corp.* v. *Asselta*, 331 U.S. 199; *Bay Ridge Operating Co.* v. *Aaron*, 334 U.S. 446.

These cases are wholly dissimilar to the case at bar. The *Youngerman-Reynolds* and *Harnischfeger* cases involved piece rate wage plans; the *Bay Ridge* and *Helmerich & Payne* cases, split pay plans. *149 Madison Avenue Corp.* v. *Asselta* involved a formula plan which, in fact, was not followed by the parties.

In the latter case, Mr. Chief Justice Vinson stated (331 U.S. 209):

> "This is not a case like *Walling* v. *A. H. Belo Corp.*, 316 U.S. 624, 86 L. Ed. 1716, 61 S. Ct. 1223, supra, or *Walling* v. *Halliburton Oil Well Cementing Co.*, 331 U.S. 17, ante, 1312, 67 S. Ct. 1056 (1947). Unlike those cases there was here no provision for a guaranteed weekly wage with a stipulation of an hourly rate which under the circumstances presented could properly be regarded as the actual regular rate of pay."

The only cases cited by petitioners that involve pay plans similar to that presented in this case are the *Belo*[2] and *Halliburton*[3] cases, and neither of these cases imposes as a condition to validity the requirement that employees receive more wages than the guaranteed minimum.

Mr. Justice Frankfurter, in a concurring opinion in the *Harnischfeger* case, said (325 U.S. 433):

> "Nor does the act bar an agreement establishing an hourly 'regular rate' that does not fall short of the statutory minimum even though it be complicated by a guaranteed weekly lump sum wage adapted to the circumstances of a particular employment, provided it is not a mere artifice unrelated to wage-earning actualities."

The cases cited by petitioners, regardless of the result reached, indicate that the validity of guaranteed wage plans depends upon the particular facts of the case presented. The test applied is whether the stipulated hourly rate is a mere artifice unrelated to wage earning actualities. There is not one word of testimony in this case to support the contention that the stipulated rate never, in fact, served as a basis for computing the employees' earnings. Apparently overlooked was that portion of finding of fact No. 8 (R. 80), reading as follows:

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[2]Walling v. A. H. Belo Corp., 316 U.S. 624.
[3]Walling v. Halliburton Oil Well Cementing Co., 331 U.S. 17.

> "The court further finds that in certain cases such employees actually worked the full number of guaranteed hours; that they were always subject to being required to work the full number of guaranteed hours, and that they always worked such number of hours when it was necessary to complete the week's work."

It is indisputable that in every instance where an employee worked the full scheduled work week the stipulated hourly rate did, in fact, serve as the basis for computing his earnings.

The president of the company explained why the company felt it necessary to have a weekly guarantee for its office employees. The company's plant is located in the extreme eastern area of the city, far removed from the shopping district, and probably a great distance from the residences of the office employees (R. 64). During certain seasons business is slack and there is not always a substantial amount of work to be done on Saturday. Nevertheless, it is necessary for this work to be performed. The company did not feel that it was fair to call its office employees to the plant on Saturday if the company could pay them only for an hour or two of work (R. 64). The weekly guaranteed minimum wage plan enabled the company to pay these employees for a full shift on Saturday, even though the business of the company was insufficient to provide a full day's work. The evidence is clear that the guaranteed wage was instituted for the benefit of the employees, and that it resulted in larger earnings to employees than otherwise could have been paid. There is not one hint in the record in this case that the plan was instituted by the employer to evade any of its responsibilities under the Fair Labor Standards Act.

This was not a plan that was "merely set up on the employer's books," as petitioners suggest. This plan was brought to the attention of each of the employees and each of them approved of it and benefited from it (Finding of Fact No. 7, R. 78, 79).

Petitioners charge that respondents "simply recorded the number of hours needed to equal the maximum weekly number covered by the guarantee." This is not an accurate statement. The records of hours worked were kept by each of the affected employees, not by the employer, save and except to the extent that the employer maintained the records so made by its office employees. These same employees extended and computed their own pay roll checks in accordance with the hours of work reported by them (R. 56).

Petitioners mentioned in their petition certain discrepancies in the pay roll records. These discrepancies were brought to the attention of the trial court and also the Court of Appeals. Upon the basis of these discrepancies, which petitioners admit are isolated, they ask the court to infer that the stipulated hourly rate was fictitious and was not, in fact, used as a basis for determining the pay of the affected employees. Neither of the lower courts thought this inference justified in view of the positive testimony in the case and in view of other entries in the pay roll records which pointed to the bona fides of the stipulated hourly rate.

The 1949 amendments to the Fair Labor Standards Act have removed many of the perplexities that existed under Section 7 of the act. Section 7 (e) of the act provides (29 U.S. C.A. 207 (e)):

> "(e) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section 206 (a) of this title and compensation at not less than one and one-half times such rate for all hours worked in excess of forty in any workweek, and (2) provides a weekly guaranty of

pay for not more than sixty hours based on the rates so specified."

The employment agreements involved in this case appear to meet all of the requirements of the statute; (1) the duties of the employees necessitated irregular hours of work; (2) the agreement specifies a regular rate of pay not less than the minimum provided in Section 6 of the act and not less than one and one-half times that amount for hours in excess of forty; and (3) the agreement provides for a weekly guaranty of pay for not more than sixty hours based on the rate so specified.

Petitioners seek to add a fourth requirement, to-wit, that the plan will sometimes produce earnings in excess of the guaranty (see footnote 3, page 12 of petitioners' brief). Had Congress intended any such additional requirement, it is reasonable to assume that the requirement would have been incorporated therein.

Petitioners suggest that the 1949 amendments are mere codifications of the various decisions on Belo-type contracts. Since we believe the employment agreements in the present case are valid under prior decisions of this court, it probably is unnecessary to determine this issue in this case. However, we submit that petitioners' contention in this respect is not justified. Congress apparently was endeavoring to eliminate the uncertainties created by various rulings and interpretations of the Wage and Hour Division and by the decisions of the courts. One of the prime purposes of the amendments was to remove the perplexities caused by the term, "regular rate" as used in Section 7 of the act. The amendments exclude from the regular rate certain payments that the courts and the Administrator of the Wage and Hour Division previously had included in computing regular rates under varying circumstances. Thus, the employment agreement held to violate Section 7 of the act in *Bay Ridge Operating Co.* v. *Aaron*, 334 U.S. 446, is not

a violation of Section 7, as amended. Therefore, the amendments did do more than merely codify the principles announced by this court in the various decisions dealing with guaranteed wage agreements. The amendments, in fact, changed the law as previously construed by the courts.

We believe it clear that Congress, by Section 7 (e), intended to provide a method by which an employee whose hours of work were irregular could receive a fixed, certain weekly sum of money for his labors, even though on a strict hourly calculation he might not be entitled to the sum received. The desirability, from an employee's standpoint, of a steady income need not be expounded. Despite the benefits thus derived by employees, the Wage and Hour Division has uniformly contested the validity of such arrangements. We submit that Congress was endeavoring to remove the uncertainties attendant upon such wage plans in order that an employer might safely accommodate his employees.

If, as suggested in footnote 3 at page 12 of petitioners' brief, the hours of work of respondents' office employees were not "irregular hours of work," then it is submitted that the sums received by them for hours they did not work are "payments made for occasional periods when no work is performed due to * * * failure of the employer to provide sufficient work" and are permissible under Section 7 (d) (2) of the act.

[b.] There is no conflict between the decision below and the decisions in *McComb* v. *Roig*, 181 F. (2) 726 (C.A. 1), and *McComb* v. *Sterling Ice & Cold Storage Co.*, 165 F. (2) 264 (C.A. 10). The facts in these cases do not even closely resemble the case at bar. In the *Roig* case, the court found as a fact that there was no reasonable relation either on an individual or on a group basis between the weekly guarantees and the hourly rates of the workers in question. In the *Sterling Ice* case, the court found that neither employer nor employee at-

tached any significance to actual hours of work. No such findings were either made or justified in the case at bar. These decisions merely reflect that each case is tested on its own facts and that no hard and fast rule can be laid down as a test in these cases.

Petitioners have failed to mention in their brief the case of *McComb* v. *Pacific & Atlantic Shippers Ass'n*, 175 F. (2) 411 (C.A. 7), which on its facts is almost identical with the case at bar and which resulted in a decision adverse to petitioners' present contention. The opinion in the case last cited reflects that the employees received a guaranteed minimum wage based on a forty-eight hour week, and that "the number of hours worked by these employees was less than forty-eight hours in any week." The court there held that there was no basis in fact for the contention that the employer had devised an artificial method of payment or that its agreement with its employees was not bona fide. The court remarked that the method of compensation not only was understood by the employees, but was satisfactory to them and was utilized for compliance with and not for evasion of the requirements of the act. The lower courts in the case at bar made similar findings.

It is submitted that there is no conflict in the decisions of the various Courts of Appeal on the issues presented in this case. Each case presents a question of fact for determination and, despite the results reached in the various cases on varying sets of circumstances, the lower courts in the case at bar have applied the same legal principles that have been announced by this court from time to time.

2. The vacation of the injunction does not conflict with this court's decision in *United States* v. *Swift & Co.*, 286 U.S. 186. There the injunction forbade certain specific acts. Here the injunction is in general terms, forbidding violation of an act technical in nature and attended by such perplexities that

the members of this court are not always in agreement concerning its interpretation.

The decision in *Swift* recognizes that "a court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong." 286 U.S. 114, 115.

The propriety of an injunction couched in such indefinite terms as that in the case at bar is not without question. *McComb* v. *Jacksonville Paper Co.* (dissenting opinion), 336 U.S. 187, 197.

The opinion of the court in the *Jacksonville* case contains the following comment:

> "Yet if there were extenuating circumstances or if the decree was too burdensome in operation, there was a method of relief apart from an appeal. Respondents could have petitioned the District Court for a modification, clarification or construction of the order." 336 U.S. 187, 192.

The opinion of this court in *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 421, upholds the right of a court to refuse an injunction when the alleged unlawful acts have been discontinued and it is apparent that the offender has a bona fide intent to comply with the law. By analogy, evidence of like conduct continued over a period of ten years justifies the vacation of an injunction previously granted.

More recently, the Court of Appeals for the Fourth Circuit in *Tobin* v. *Alma Mills*, 192 F. (2) 133, relieved a defendant of an injunction substantially identical with that involved in this action. An interesting fact in that case was that the trial court found, as did the trial court in the case at bar, that the employer was guilty of a technical violation of the injunction, adjudged the employer in contempt, but nevertheless vacated the injunction. On appeal the court held that there was no

technical violation of the injunction, reversed that portion of the decree, but approved the trial court's action in vacating its previous injunction. The basis for the appellate court's finding that there was no violation of the act was that the employees had voluntarily performed work prior to their scheduled hours of work and that the employer should not be held responsible for this voluntary action of its employees. In the case at bar, the only violation found by the trial court was the failure of the employer to keep a technically accurate record of hours actually worked by office employees. This record, which the court found to be technically inaccurate, was made by the affected employees. They signed and kept their own time records, from which entries were made on respondents' books by the identical employees who signed the basic time slips. The Court of Appeals in the *Alma Mills* case said:

> "There is no occasion to dissolve the ordinary injunctive order which merely forbids or commands the doing of a particular act and which loses all practical significance with the passage of a short period of time. When a continuing injunction against the violation of a statute is granted, however, the effect is to place the one against whom it is issued under probation to observe the statute, and to add to the penalties prescribed by law for its violation the additional penalties of fine and imprisonment for contempt of court. This sort of government by injunction should not be unduly extended; and it cannot be said that there is abuse of discretion in dissolving such an injunction when it appears that it has been in effect long enough to accomplish the purpose for which it was granted and that there is no longer any reason to apprehend violation of the statute by the person enjoined." 192 F. (2) 133, 136.

Injunctions under the Fair Labor Standards Act also have been vacated in the following unofficially reported cases: *McComb* v. *Lexington Lumber Co.*, C.C.H. 15 Labor Cases, Par. 64,885 (E.D., S.C., 1948); *Tobin* v. *J. McFadden Neely et al.*, C.C.H. 22 Labor Cases, Par. 67,285 (N.D., Ga., 1952).

If some excuse other than good conduct over a period of ten years and the manifestation of a bona fide intent to comply with the law is necessary in order to justify the court's action in this case, we respectfully invite the court's attention to finding of fact No. 12 (R. 82).

The Government's action in instituting this suit could accomplish no good purpose. No plausible excuse has ever been offered to justify the tremendous expense imposed upon the Government and upon the respondents by virtue of this action. At the time the action was filed the respondents had placed into effect all changes recommended by the Wage and Hour Division (S.R. 15).

These changes included the discontinuance of the guaranteed pay plan and the discontinuance of the system whereby employees recorded their own hours of work. Immediately after the investigator questioned the time records and recommended installation of a time clock, a time clock was purchased and installed (S.R. 15). No further changes in respondents' pay roll practices were sought in the present case. Back pay for the employees does not justify this action, as no request for any such payments was ever made of respondents prior to the present action (S.R. 22). Up until the institution of the suit the Government had not even suggested to the respondents that they possibly were obligated for payment of any additional wages. The present action was calculated to accomplish one thing only—punishment of the respondents—and Government counsel, in the middle of the trial, recognizing the absurdity of the criminal charges, moved for their dismissal (S.R. 26).

The evidence disclosed that the Wage and Hour investigator had solicited employees "to join in the proceedings," offer evidence against their employer, and participate in the monetary benefits expected therefrom (S.R. 3, 4, 27).

The virtual impossibility of satisfying the Wage and Hour Division is reflected by its brief in this case filed in the Court of Appeals. Even though time clocks were purchased and installed on petitioners' request, it was argued in the Court of Appeals that the time clock records were inaccurate because the office girls were not required to clock out if they left their desks for a Coca-Cola (appellants' brief, Court of Appeals, p. 31). Presumably, in the opinion of the Department of Labor, this "misconduct" of the employer would justify a further prosecution for civil or criminal contempt if the injunction be reinstated. Perhaps the trial court felt that it should not continue judicial sanction of such petty harassments.

We will not attempt at this time to review the evidence justifying the trial court's action. We submit that the findings of fact amply support the vacation of the injunction. Petitioners tacitly admit that the proposed change of ownership in the *Alma Mills* case was sufficient to justify the termination of the injunction in that case. There also was a change of ownership in the Little Rock Packing Company. The only difference is that in the latter the change was effected by inheritance rather than by purchase.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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